(Testimony of Oscar Nystrom.)

Q. What?

A. I only can say that as pertaining to the time I had contact at that time between them dates there. I cannot [2362] say the exact date.

Q. Were they on a tray?

A. No, they were not.

Q. They were stacked how high?

A. Four to five high.

Q. Four to five high? A. That is right.

Q. Now, then, how about these cases that were some distance removed, about 20 feet away? What was the maximum number of cases of eggs that you saw in those piles during the period from April 24th to May 13th?

A. I was saying yesterday—saying like this here was Mr. Goddard's office—Goddard's office is not much longer than this jury box, here, and then the rest of the building going back maybe 50 or 60 feet—well, them eggs would be piled in tiers from the end of this office all the way down the other end of that building. I wouldn't have any judgment of how many cases were there, because lots of times there would be cases on trays.

Q. Were they on trays?

A. The ones alongside the wall past his office?

Q. Yes. Were they on trays?

A. Some were and some were not.

Q. How far is the candling booth—not the room for the women candlers—but how far is the candling booth that is set up for the use of the Government agents from Mr. Goddard's office?

(Testimony of Oscar Nystrom.)

A. That candling room is set right against his office, right on the end.

Q. Right on the end of his office?

A. Right on the end of his office. There would be a couple of feet vacancy on one [2363] side and the other side.

Q. Well, it would be as close as you are sitting to the jury box, wouldn't it?

A. What is that, sir?

Q. That candling booth would be as close to Mr. Goddard's office as you are sitting on the witness chair to the jury box, isn't that right?

A. Well, like I was discussing about Mr. Goddard's office being like the jury box here, his candling room would be sitting right at the end of that section here.

Q. Where the chair is?

A. That is right, just approximately where the chair is.

Q. Now, Mr. Nystrom, do you remember taking some merchandise to a ship called the Cape Charles?

A. That is right.

Q. What did you take down to the Cape Charles?

A. I took down some butter, eggs and cheese.

Q. Do you recall the quantity?

A. I don't remember exactly.

Q. Do you recall the quantity of eggs?

A. I don't remember exactly.

Q. Do you recall the type of box they were in?

A. That I don't remember.

Q. Do you recall the type of labels on the cases?

(Testimony of Oscar Nystrom.)

A. I don't.

Q. Do you remember the quantity of butter involved? A. No, I don't.

Q. Do you remember the quantity of cheese involved? A. No, I don't. [2364]

Q. Did you deliver the butter, eggs and cheese to the Cape Charles? A. I did.

Q. And after you delivered it did you either before or after you delivered it phone Mr. Magee?

A. Did I phone Mr. Magee after I delivered it?

Q. Yes.

A. I phoned him before I delivered it.

Q. Before? A. Yes.

Q. Well, what time did you make this delivery?

A. I don't remember exactly.

Q. Was it in the morning or in the afternoon?

A. That I don't remember.

Q. But you do remember in respect to the Cape Charles that before you went to the waterfront you phoned Mr. Magee? A. After I left the plant.

Q. What?

A. Before I reached the waterfront I contacted Mr. Magee.

Q. Where did you contact him?

A. At 111 Sutter Street.

Q. On the way to the pier?

A. That is right.

Q. That is the office of the FBI, Federal Bureau of Investigation? A. That is right.

Q. You took your truck and drove down there, did you? A. What is that, sir?

(Testimony of Oscar Nystrom.)

Q. Yes. A. I didn't get your question.

Q. You drove down to the FBI at 111 Sutter Street in your truck?

A. No, I didn't drive there. I phoned there.

Q. Oh, you phoned them?

A. That is right.

Q. You phoned them at 111 Sutter Street?

A. That is right.

Q. And after you phoned them where did you go then?

A. I made my delivrey to the Cape Charles.

Q. Do you recall what pier that was?

A. I don't remember exactly.

Q. When you got there was Mr. Magee there, or Mr. Johnson?

A. I never did see them there then.

Q. Did you see them on the pier on any occasion when you made the delivery?

A. I have have seen them there, yes.

Q. What occasion was it that you saw Mr. Magee and Mr. Johnson on the pier when you made a delivery?

A. I don't remember that, because it was more than once or twice.

Q. It was what?

A. I said I don't remember that, because it was more than once or twice.

Q. Well, was it five or six times?

A. It could be that.

Q. And would you meet them before you went on the pier?

(Testimony of Oscar Nystrom.)

A. No, I would never meet them before I went on the pier.

Q. Would they be there on these five or six times on the pier when you got there?

A. They would be.

Q. Name one instance of one of these ships where Mr. Magee or Mr. Johnson were down there before you unloaded your truck.

A. I can't remember.

Q. You do remember in reference to the Cape Charles that there was butter, eggs and cheese involved, is that right? [2366]

A. That is right.

Q. Now, where did you get the butter for that ship? A. I got that from Mr. Goddard.

Q. How do you remember that, Mr. Nystrom?

A. On all occasions when I got butter Mr. Berman would either contact Mr. Goddard or he would send me to see Mr. Goddard for butter because he had charge of the warehouse, the cold storage plant.

Q. Mr. Nystrom, I have asked you about these instances and you do not remember about them, but you are so certain that Mr. Berman gave you the butter. Is that based upon a clear recollection that when you got butter for the Cape Charles that Mr. Berman pointed it out?

Mr. Hippel: No, Mr. Goddard, Mr. Faulkner.

Mr. Faulkner: I mean Mr. Goddard. Withdraw the question.

Q. Is your recollection that Mr. Goddard pointed the butter out that you were to take to the Cape

(Testimony of Oscar Nystrom.)

Charles based upon a clear recollection of that incident in reference to the Cape Charles?

A. It is a clear recollection that at all times that I have been there in their service that at any time I ever came in contact with any butter, that I would have to go to Mr. Goddard to obtain that butter.

Q. Just a moment ago you said that all butter was obtained from Mr. Goddard, or Mr. Berman would ask Mr. Goddard for the butter.

Mr. Hippeli: He didn't say that, your Honor.

Mr. Faulkner: Q. Didn't you say that, Mr. Nystrom? [2367]

A. I say at all times I have been at that plant, any time that I have come in contact with any butter for a delivery, I was directed by Mr. Berman to either see Mr. Goddard, or Mr. Berman would see Mr. Goddard with me, and obtain the butter for the delivery.

Q. In other words, either you or Mr. Berman then would ask Mr. Goddard for butter?

A. Or he would send me to Mr. Goddard. I would be with them at that time.

Q. Or you would go over and talk with Mr. Goddard, or Mr. Berman would go over to Mr. Goddard with you?

A. I would go with him.

Q. So that your recollection of these instances you say Mr. Goddard was requested to point out butter to fill an order—your recollection is based upon the common everyday occurrence in that plant, isn't that correct?

(Testimony of Oscar Nystrom.)

A. That is right.

Q. And it was that way from the time you started?

A. It was always that way, that I know of.

Q. Mr. Goddard had control of the keys to the large refrigerating unit that contained butter?

A. That is right.

Q. And he would open up the plant and you would go in and get the butter and take it out, is that right? A. That is right.

Q. And that is the work that you would do. You would actually remove the butter, isn't that right?

A. With the help of Mr. Goddard. [2368]

Q. Well, did he help you every time carry butter out to the truck?

A. He would be right there with—he would always have me go in with an empty tray. He would be right there, and he would help me maybe throw a few cases on a flat, and then he would count them before I left. And they told me never to touch anything without seeing them.

Q. Who physically put the butter on the tray?

A. I did.

Q. Who physically put the butter that was on the tray in the truck? A. I did.

Q. And you did that from April 24th until the 13th of May, is that correct?

A. At the time I was there, yes.

Q. Do you remember anything about any cheese in reference to the Cape Charles?

A. I don't quite remember.

(Testimony of Oscar Nystrom.)

Q. Do you remeber a ship called the Gilbert Hitchcock?

A. I do recall the name.

Q. How do you recall the name of the Gilbert Hitchcock at this time?

A. From my mind being refreshed from a signed testimony that I made under oath at the time that I came in contact with that vessel.

Q. And who refreshed your mind?

A. The testimony that I signed.

Q. Who showed it to you? Who showed it to you?

A. What is that, sir?

Q. Who showed it to you?

A. Mr. Magee.

Q. How many times has he talked to you about refreshing your [2369] mind in this case?

A. In the case of the Gilbert Hitchcock?

Q. In the case of United States vs. Nye & Nissen, the case that you are now testifying in.

A. I could say any number of times.

Q. Yes, all right. Do you remember what was involved in the Gilbert Hitchcock shipment?

A. I don't quite remember.

Q. Do you know whether any eggs were involved? A. There were some eggs.

Q. Was there butter or cheese?

A. There could be some.

Q. What? A. There could be some.

Q. Well, do you remember butter, eggs, and cheese being loaded on a truck and your taking

(Testimony of Oscar Nystrom.)

that—and after it was loaded you took the truck down to the Gilbert Hitchcock?

A. That is right.

Q. What?

A. That is right. I took it to the Gilbert Hitchcock.

Q. Do you remember the incident?

A. Are you referring to the exact day?

Q. No, not dates, at all. Do you remember, as you sit there as a witness, an incident of taking something down to the Gilbert Hitchcock?

A. I remember that.

Q. What did you take down?

A. I took butter, eggs, and cheese.

Q. How much butter?

A. I don't recall.

Q. How many cases of eggs?

A. I don't remember.

Q. How were the eggs marked?

A. I don't remember.

Q. How many cases of cheese?

A. I don't remember that, either. [2370]

Q. What type of cheese?

A. I don't remember.

Q. Do you remember a ship called the Henry White? A. I recall it by name.

Q. Did your ever go down there in the month of April or May to deliver anything to the Henry White? A. Yes, I did.

Q. Do you remember, as you sit there now as a witness a transaction where you left the plant of Nye & Nissen and went to the Henry White?

(Testimony of Oscar Nystrom.)

A. When I went to the Henry White?

Q. Yes.

A. I remember delivering some eggs.

Q. What did you deliver?

A. I don't remember exactly.

Q. Did you deliver eggs?

A. I delivered eggs.

Q. What kind of eggs?

A. I don't remember.

Q. How were the cases marked?

A. Nye & Nissen labels.

Q. What kind of labels?

A. Green labels.

Q. How do you remember that?

A. Most orders always call for Medium Grade AA Eggs.

Q. Mr. Nystrom, at the time of these transactions, is it not true that the quantity of eggs in the plant of Nye & Nissen, that there were about six times as many cases of large eggs in their plant as there were medium eggs?

A. I am not an egg plant worker.

Q. You just testified that most orders called for green labels.

A. I am just testifying what I seen with my own eyes or what I came in contact with.

Q. You do not remember the label on the Gilbert Hitchcock [2371] but you do remember the label on the Henry White?

A. I happened in that incident, yes.

Q. What was the label on the shipment of eggs that went to the Henry White?

(Testimony of Oscar Nystrom.)

A. With the hen sitting in the basket with "Biddy Eggs" on top.

Q. And was it a green label?

A. I am quite sure it was.

Q. Did every case have a green label on?

A. I don't remember.

Q. Were the cases fiber cases or wooden cases?

A. I believe they were wooden cases.

Q. Is it your best recollection that all of the cases on the Henry White were wooden?

A. I couldn't say that positively, no.

Q. How many cases of cheese were delivered in that order, if there was any?

A. I don't remember.

Q. How many cartons of butter were delivered, if there were any delivered?

A. I don't remember.

Q. Do you remember whether there was any cheese or butter delivered to the Henry White?

A. I don't remember.

Q. Now, when you got to the pier where you delivered the eggs to the Henry White—when you got there, had you phoned Mr. Magee or Mr. Johnson before you got there?

A. I don't remember that instance.

Q. Did you phone after you got there?

A. I still don't remember that.

Q. When you did get there you unloaded your truck? A. I did. [2372]

A. That is right.

Q. And you got a receipt for the merchandise?

(Testimony of Oscar Nystrom.)

Q. And how many cases did you deliver?

A. I don't remember.

Q. And when you got the delivery completed you brought the receipt back to Mr. Berman?

A. That is right. I brought it back to the Seventeenth and Missouri Street, to the Nye & Nissen plant. [2372-a]

Q. Do you remember what time of day you made the delivery to the Henry White?

A. I do not.

Q. Did the eggs that went to the Henry White bear a Department of Agriculture stamp?

A. I believe they did.

Q. Did the eggs that went to the Gilbert Hitchcock bear a Department of Agriculture stamp?

A. That I don't remember.

Q. But those on the Henry White you do remember? A. I did.

Q. And they did bear the stamp?

A. What is that, sir?

Q. I say and the egg cases did bear the Department of Agriculture stamp?

A. That is right.

Q. Did you examine each case on the Henry White?

A. I didn't examine every case. I can't say that truthfully.

Q. Did you examine each case on the Gilbert Hitchcock? A. No, I did not.

Q. Did you ever receive a request or a direction from Mr. Magee or Mr. Johnson to examine the

(Testimony of Oscar Nystrom.)

cases of eggs in respect to determining whether they bore a Department of Agriculture stamp?

A. They never did ask me.

Q. At any time? A. At any time.

Q. So that your testimony here as to which cases bore a Department of Agriculture stamp and which did not is based upon your memory of the occurrence, is that right?

A. That is right.

Q. Do you remember a ship called the Czechoslovakia Victory? A. Yes, I do.

Q. Did you make any delivery to that ship in the month of April [2373] or May, 1944?

A. That is right.

Q. When was it, April or May?

A. I don't remember the exact day.

Q. Do you recall what was delivered to the Czechoslovakia Victory? A. Yes, I do.

Q. What was it? A. It was eggs.

Q. Was any butter delivered?

A. I don't believe so.

Q. Any cheese delivered?

A. I can't say for sure.

Q. How large a quantity of eggs was delivered?

A. That I don't remember.

Q. Did you examine the cases?

A. I did not.

Q. You did not? A. I did not.

Q. Did you examine whether the cases were of wood or of fiber?

A. That I don't recollect.

(Testimony of Oscar Nystrom.)

Q. Do you recall whether they had a label on the ends?

A. Most of the deliveries I had made had labels.

Q. What?

A. I said most of the deliveries I had made had labels. I cannot say in that instance that I can state positively whether there were or not.

Q. A lot of the cases of eggs that you were delivering in April and May 1944 did not bear a label, did they?

A. In a lot of instances where the wooden cases would just be stamped with the Nye & Nissen with a purple—just a small stamp with Nye & Nissen stamped on the corner.

Q. And others had a label on, that is, a green label? [2374]

A. You mean a green or a blue—there have been occasions where I have seen those labels, yes.

Q. On the Czechoslovakia Victory you do not remember whether those cases were wood or fiber or whether they did or did not bear a label?

A. That is right.

Q. Do you know whether they bore a Department of Agriculture stamp?

A. That I don't remember.

Q. Do you remember a ship called the Phillipa?

A. I do remember the Phillipa.

Q. Did you make a delivery to that ship?

A. I did.

Q. Do you recall what you delivered?

A. Yes, I do.

(Testimony of Oscar Nyström.)

Q. What did you deliver?

A. I delivered butter, eggs and cheese.

Q. Do you remember the incident clearly, do you? A. No, I do not.

Q. Do you recall how many cases of eggs were delivered? A. No, I do not.

Q. Do you recall the quantity of cheese or butter? A. No, I do not.

Q. Do you recall how the cheese was packed?

A. No, I do not.

Q. Do you recall how the butter was packed?

A. No, I do not.

Q. Do you recall how the eggs were packed?

A. That I can't say positively either.

Q. Do you recall whether they had a Department of Agriculture [2375] stamp on?

A. That I can't recollect.

Q. Do you recall from what part of the plant of Nye & Nissen the eggs involved in the Cape Charles, the Gilbert Hitchcock, the Henry White, the Czechoslovakia Victory and the Phillipa were taken? A. I do not recall.

Q. Do you recall a ship called the Edmund Ross?

A. I did deliver that boat.

Q. You made a delivery there? What did you deliver?

A. I delivered some butter, eggs and cheese.

Q. Do you remember the instance clearly?

A. I remember making the delivery.

Q. Do you remember the circumstances of the

(Testimony of Oscar Nystrom.)

delivery? A. Excuse me, sir?

Q. Do you remember any of the instances relating to the deliver, ?

A. No, I do not.

Q. Do you remember how many cases of eggs were involved? A. No, I do not.

Q. What quantity of cheese was involved, if any? A. No, I do not.

Q. Or butter? A. No, I do not.

Q. Do you recall whether the cases of eggs were wood or fiber?

A. That I don't recall.

Q. Do you recall whether they bore a label?

A. That I don't recall.

Q. Do you recall whether they bore a Department of Agriculture [2376] stamp?

A. That I don't recall.

Q. Do you recall whether in connection with the Czechoslovakia Victory and the Phillipa and the Edmund Ross, those three instances, whether on each occasion of the delivery you phoned Mr. Magee? A. I don't remember.

Q. Do you remember whether you phoned him on any instance of a delivery to either of those three ships? A. I don't remember.

Q. Do you recall what month the delivery was made to the Edmund Ross?

A. The Edmund Ross?

Q. Yes.

A. I believe that was in May of 1944.

Q. Your recollection is it was May.

(Testimony of Oscar Nystrom.)

A. Either May or the end of April.

Q. Do you recall a ship called the William A. Coulter? A. I recall the name.

Q. Do you recall what you delivered in connection with that ship? A. No, I do not.

Q. Do you recall the number of cases of eggs involved? A. No, I do not.

Q. You know that eggs were involved though, don't you? A. I do.

Q. Do you recall whether the eggs were in wood or fiber cases? A. That I don't recall.

Q. Do you recall whether they bore a Department of Agriculture stamp?

A. I don't recall. [2377]

Q. Do you recall where in the premises of Nye & Nissen the eggs were obtained that went on your truck in that case? A. I do not.

Q. Do you recall whether you phoned Mr. Magee at the time of that delivery or immediately thereafter? A. That I don't remember.

Q. Do you remember a case named the Francis Parker where you delivered to the Francis Parker?

A. I recall the name of that ship.

Q. Do you recall making a delivery to the ship?

A. I do.

Q. Do you recall what you delivered?

A. No, I do not.

Q. You do know there were eggs involved?

A. I know there were eggs, yes.

Q. In other words, in practically all of these transactions——

(Testimony of Oscar Nystrom.)

A. Practically all transactions were eggs.

Q. Do you remember anything in relation to cheese, if there was anything?

A. No, I do not.

Q. Or butter? A. I do not.

Q. Do you remember how many cases of eggs were involved?

A. No, I do not.

Q. Do you recall in what type of cases they were packed? A. No, I do not.

Q. Do you know whether the cases bore a Department of Agriculture stamp?

A. No, I do not.

Q. Do you know what part of the premises the cases of eggs came from?

A. I don't remember the exact part [2378] of the premises.

Q. Did you phone Mr. Magee in reference to the Francis Parker?

A. I may have and I may have not.

Q. Do you remember what month it was that you made a delivery to the Francis Parker?

A. All I can recall relates—when I made that delivery it was the latter part of April or the first part of May.

Q. All of the deliveries, Mr. Nystrom, that you have testified to in this case were made in the latter part of April or in the early part of May, weren't they?

A. Will you state your question more clearly?

Q. I say each of the deliveries that you have

(Testimony of Oscar Nystrom.)

referred to in your testimony was made in the latter part of April or the early part of May?

A. That is right.

Q. And you know that that delivery was during that period? A. That is right.

Q. Do you remember a delivery to the Cape Cumberland? A. I do.

Q. When did that occur?

A. That occurred a short time before I left there.

Q. Well, how long before you left?

A. I would say three or four days before I left there.

Q. What ship did you deliver to on the day that you left?

A. I believe on the day I left I delivered to the Heber Creel.

Q. The what? A. The Heber Creel.

Q. Is it your recollection the last delivery that you made [2379] for Nye & Nissen on the waterfront was to the Heber Creel?

A. You will have to speak more distinct.

Q. I say is it your recollection now as a witness that the last delivery you made at the waterfront while you were in the employ of Nye & Nissen was to the Heber Creel. A. That is right.

Q. Now, in reference to the Cape Cumberland, do you remember what you delivered?

A. Yes, I do.

Q. What did you deliver?

A. I delivered some butter, eggs and cheese.

(Testimony of Oscar Nystrom.)

Q. How many cases of eggs?

A. I don't remember.

Q. How many cases of cheese?

A. That I don't remember.

Q. How many cases of butter?

A. That I don't remember.

Q. Do you remember where the eggs came from that went on the truck to go to the Cape Cumberland?

A. They came from the Nye & Nissen plant at 17th and Missouri.

Q. Do you remember from what part of the plant?

A. Not the exact part of the plant, no.

Q. Were they in wood or fiber cases?

A. On most of the occasions there may be some fiber and there may be some wood cases included.

Q. The plant at the time you were working in April and May had both types, did they not? They had both types of cases?

A. Both types of cases. They had.

Q. Some of them were new and some of them were old, both in wood and fiber, isn't that correct?

A. That is right. [2380]

Q. And that was true of cases for eggs and cases for cheese, was it not?

A. In the cheese, no.

Q. They were all new, is that right?

A. Oustide of the Romano Dolce cheese.

Q. How were they packed? What kind of package?

(Testimony of Oscar Nystrom.)

A. Usually packed in orange boxes.

Q. Orange boxes? A. That is right.

Q. Secondhand orange boxes?

A. Secondhand orange boxes, right.

Q. Were they ever packed in egg boxes, that type of cheese?

A. I imagine they could be packed in an egg box.

Q. You do not remember the quantity of butter or cheese involved in the Cape Cumberland?

A. I know that there was butter and cheese in that order on account I do remember an occasion of seeing them scrape the weights off the boxes of cheese.

Q. How do you remember that, Mr. Nystrom?

A. Well, I seen Mr. Berman come to Mr. Robison and instruct him that he would have to take the weight off the cheese boxes first.

Q. In other words, you remember that incident?

A. That is how I remember that incident, yes.

Q. What kind of cheese was involved?

A. Cheddar loaf cheese.

Q. In what kind of a case was it?

A. A wooden case.

Q. How many cases were there?

A. I believe there were four at that time that I remember. [2381]

Q. And they were all scraped by Mr. Berman and Mr. Robison? A. I do.

Q. You remember that?

A. I remember that.

(Testimony of Oscar Nystrom.)

Q. Has your memory been refreshed on that subject, Mr. Nystrom, by Mr. Magee?

A. What is that, sir?

Q. Before you came into court to testify on the subject of scraping labels off of boxes on an occasion in that plant was your memory refreshed on that subject by Mr. Magee?

A. It was refreshed by a sworn testimony that I made.

Q. Yes, and Mr. Magee called it to your attention, is that right? A. To the testimony.

Q. And are you testifying now from your own recollection or from your memory refreshed with the assistance of Mr. Magee?

A. It is refreshed from a copy of that testimony that I made pertaining to this testimony that I signed on all sheets.

Q. So that your testimony here in court on the subject of these instances that you remember is based upon a recollection which has been refreshed with the assistance of Mr. Magee and a paper prepared in his handwriting, is that right?

A. It is not refreshed by him. It is refreshed by myself, to that signed statement in that respect.

Q. Do you remember a delivery to a ship called the Mission San Diego? A. I do.

Q. Do you recall when it occurred?

A. I made that delivery.

Q. What? A. I made that delivery.

Q. Do you recall when?

A. I don't remember the exact date. [2382]

(Testimony of Oscar Nystrom.)

Mr. Faulkner: Q. Do you remember anything in connection with the delivery to the Mission San Diego? A. I do.

Q. You remember butter, eggs, and cheese was involved? A. That's right, I do.

Q. What quantity of eggs?

A. I don't remember.

Q. Were they in wooden or fiber cases?

A. That I don't remember.

Q. Did they bear a Department of Agriculture stamp? A. That I don't remember.

Q. Did they bear a label, a paper label pasted on them?

A. That I don't remember.

Q. Do you recall the quantity of cheese involved? A. That I don't remember.

Q. Do you recall the quantity of butter involved? A. That I don't remember.

Q. Do you recall what part of the plant of Nye & Nissen the eggs came from?

A. That I do not know.

Q. When you made the delivery to the Mission San Diego and the Cape Cumberland, did you telephone on either occasion to Mr. Magee?

A. On the Cape Cumberland and the Mission San Diego, is that the ones you are referring to?

Q. Yes, Cape Cumberland and Mission San Diego.

A. I think I contacted them.

Q. On both occasions?

A. On both occasions.

(Testimony of Oscar Nystrom.)

Q. You remember the Heber M. Creel, that was the last day you [2383] worked, was that right?

A. I remember the Heber Creel, yes.

Q. I mean it was a delivery on the last day you worked for Nye & Nissen, is that correct?

A. It may have been the day before. It was at the time when I left there.

Q. I think you left on the 13th and you made this delivery on the 12th.

A. I guess that's right.

Q. Is that about right?

A. That is about right.

Q. Do you recall what you delivered to the Heber Creel?

A. I recall delivery to the Heber Creel.

Q. What was it?

A. It was butter, eggs, and cheese.

Q. How many cases of eggs?

A. I don't remember.

Q. How were they packed, in wooden or fiber cases? A. That I don't remember.

Q. Did they have a Department of Agriculture stamp on them?

A. That I don't remember.

Q. Did they bear a label, a green label?

A. That I don't remember.

Q. Do you recall the quantity of cheese?

A. I do recall the quantity of cheese.

Q. What was the quantity?

A. The invoice called for six cases of American Processed cheese, one case of Cheddar Loaf cheese,

(Testimony of Oscar Nystrom.)

and one case of Romano Dolce. How I remember the cheese and I don't remember the eggs or butter in that respect was that——

Q. Have you exhausted your memory on the quantity involved in [2384] the shipment, 6 cases of Processed cheese, is that right?

A. I am telling you the reason why I remember them.

Q. No. I am asking you if you have exhausted your memory as to the quantity. Is that all the cheese that was involved in this shipment?

A. I gave an explanation what the invoice called for. I am not telling you what was invoiced. I just told you what the invoice called for.

Q. You read the invoice? A. Yes.

Q. Where did you read that invoice?

A. When I was ready to leave he handed me the documents.

Q. Who? A. Mr. Berman.

Q. When you were ready to leave?

A. Yes.

Q. That meant that at the time you were ready to leave your truck was loaded, is that right?

A. What?

Q. At that moment your truck was loaded?

A. No, it was not loaded.

Q. Well, you are not ready to leave until your truck is loaded, are you?

A. That's right. When it comes to the cheese or butter, it is always placed outside the truck and is double checked before it goes inside the truck.

(Testimony of Oscar Nystrom.)

Q. The butter is double checked?

A. And the cheese, also.

Q. Who double checks the butter before it goes on your truck?

A. Mr. Berman, and I do, too, for my own protection.

Q. You do it, yourself?

A. For my own protection.

Q. So that in all of these transactions where you have made [2385] deliveries up to the time you left there, before you finally drove that truck away from the plant of Nye & Nissen, you personally, for your own protection, checked the merchandise, is that right?

A. I checked the number of cases I am supposed to have.

Q. You did that on the 12th of May, is that correct? A. That's right.

Q. How much butter was there?

A. I don't remember exactly.

Q. When you checked the number of cases of eggs how many were there?

A. I don't remember.

Q. You do remember something in respect to the cheese?

A. I do remember in that respect, because one case of cheese was substituted for another.

Q. You remember that? A. Yes, I do.

Q. What type of cheese—how many bundles of processed cheese were there to put on that truck?

A. There was only five.

Q. Who brought the five cases of cheese to put

(Testimony of Oscar Nystrom.)

on that truck from the place where they were stacked in that plant?

A. Mr. Berman took me to his icebox.

Q. Beg pardon?

A. Mr. Berman took me to his icebox and told me to "Get this here," and pointed out the five cases to me. Then I brought them over and put them alongside my truck. Then he directed me where to get the Cheddar Loaf. Then he also directed me where to get the Romano Dolce. After I had that lined up in the back end of my truck he said, "Well," he says, [2386] "you can load them on." Then I happened to look at my slip, and I saw where the slip called for six packages of American Processed cheese, so I asked him, I said, "We are one case short here in this." He said that he substituted, he said, "I am giving you two cases of Cheddar Loaf cheese, that will give you the right amount of cases for the cheese."

Q. All right. Now, Mr. Nystrom, on this occasion when you were loading that truck with butter, eggs, and cheese, were you loading that truck with a delivery for anybody else?

A. That I don't remember.

Q. Somewhere along the line Mr. Berman gave you a direction to get a quantity of cheese, is that right? A. That's right.

Q. Did he talk to you and tell you the amount of cheese to get? A. That's right.

Q. What did he say when he told you what cheese to get, what words did he use?

(Testimony of Oscar Nystrom.)

A. Well, like I just explained to you a moment ago, we went to the icebox——

Q. Mr. Nystrom——

The Court: Just a minute.

Mr. Hippeli: May the witness——

The Court: Just a moment. Let him answer.

Mr. Faulkner: I object to that answer, your Honor please, as not in response to the question.

The Court: I cannot anticipate what the answer will be. He may answer. [2387]

Mr. Faulkner: I except to the ruling. I submit when I ask him a question on a particular subject that he is not entitled to ramble all over.

The Court: That will be for the court to determine. He may answer.

Mr. Faulkner: I except.

The Court: Answer the question.

Mr. Faulkner: May I have the question read to him?

The Court: Read the question, Mr. Reporter.

(The question was read by the reporter.)

The Witness: He told me to go with him to the icebox, and he took his key out of his pocket and opened the icebox. Then we walked into the icebox. He indicated the certain cheeses that I was supposed to take. He said, "Take this and put them alongside your truck."

Q. Did he point to the cheese?

A. That's right. In fact, he broke the cheese over so I could put a hand truck underneath to take it out.

(Testimony of Oscar Nystrom.)

Q. How many cases of American Processed cheese were in that icebox?

A. That is all there was.

Q. There were only five?

A. That's right.

Q. Is that right? A. That's right.

Q. You took them all?

A. I took them all.

Q. You hand-trucked them on to your truck?

A. That's right.

Q. How many cases of Romano Dolce cheese were there? [2388]

A. I took one case.

Q. How many cases were there in the chill room?

A. There were more than one.

Q. How many cases of Cheddar loaves were there in the chill room?

A. There was more than one of them.

Q. After you trucked them all over there at sometime later you checked that load, is that right?

A. That's right.

Q. You called Mr. Berman's attention to the fact that you were one case of cheese shy?

A. In the American Processed, yes.

Q. Is that correct? A. That is correct.

Q. He told you then to take a case of a different kind of cheese?

A. At the time I took the Cheddar Loaf, at that time he told me to take two. I drew his attention to that also. I said, "The order only calls for one

(Testimony of Oscar Nystrom.)

of these, and the order calls for six of the other." He said, "As long as you got the right number of packages that will be all right."

Q. I understood you to say a moment ago when all this merchandise was lined up outside of your truck——

A. Yes.

Q. ——ready to go, that you checked it.

A. I checked it again.

Q. And you found you only have five cases of American cheese.

A. And two cases of Cheddar Loaf cheese, whereas I was only supposed to have one.

Q. When was it that Mr. Berman told you to go to the icebox after you told him you were shy a case of cheese, and get the other case of cheese, when did he tell you that?

A. When did [2389] he tell me to get the cheese?

Q. Yes, when did he tell you to go to the icebox and get another case of cheese?

A. He didn't tell me to go to the icebox and get another case of cheese.

Q. You already had it there, is that right?

A. That's right.

Q. Was that all the cheese that you put on that truck that went to the Heber M. Creel?

A. I don't remember exactly.

Q. There may have been other cheese?

A. There may have been.

Q. Do you know whether you delivered——

A. Go ahead.

(Testimony of Oscar Nystrom.)

Q. (Continuing): ——the American Processed cheese to any other ship on the 12th of May?

A. I don't know.

Q. Do you remember whether you delivered any cheese to any other customer on the 12th of May?

A. That I don't remember.

Q. During the period of time from the time you left there on the 12th or 13th of May and a month previous to that, how much cheese would you find stacked out on the floor of the Nye & Nissen plant when you came in there in the morning?

A. Which cheese do you refer to?

Q. Any kind of cheese, Cheddar cheese, Romano Loaves, Romana Dolce, Cheddar Loaves.

A. Well, most all the cheeses were in the chill box.

Q. What?

A. Most all cheeses were in the chill room, outside of occasions you may find Cheddar cheese outside there.

Q. Isn't it a fact that every morning, not every other morning, but every morning when you went into that plant that you found [2390] butter and cheese stacked out on the floor outside of the icebox, every morning?

A. I have seen that, yes.

Q. You saw it every morning, didn't you?

A. Pretty close to every morning, yes.

Q. You took part of that cheese to load your truck, didn't you, you used part of that cheese?

A. I wouldn't say that, no.

(Testimony of Oscar Nystrom.)

Q. Did you use any of it?

A. I would on occasions, yes.

Q. So there were occasions when Mr. Berman didn't take you by the hand and take you into the icebox to get cheese, weren't there?

A. On the occasions that he didn't take me there I went to see Mr. Goddard for what he didn't have.

Q. During the period of time from the 18th of April, 15th of April—withdraw that.

During the period of time from the 15th of April until the time you left Nye & Nissen, I will ask whether if you remember any ship where you saw Mr. Magee or Mr. Johnson on the pier.

A. Remember any ship?

Q. Yes. A. I can't name a ship.

Q. But you know there were five or six, don't you?

A. I can't state the exact number.

Q. Now, next t Mr. Hand is a man in uniform. Did you ever see him between the period of April 15th and May 13th, 1944?

A. No, I never have.

Q. Did you ever see any man in a uniform handle any of the merchandise that you delievered at a pier between the period April [2391] 15, 1944 and May 13, 1944?

A. I believe I have seen them.

Q. What?

A. I have seen them there with a case just as I was leaving with the truck.

Q. Do you know who the man was?

(Testimony of Oscar Nystrom.)

A. No, I didn't.

Q. Have you seen him in this building in the last few weeks? A. I have not.

Q. Have you seen him in the office of Mr. Hippeli or Mr. Pratt when you were in this building?

A. No, I have not.

Q. Well, at all events, it isn't Colonel Hand that you saw on the pier?

A. What is that, sir?

Q. It is not this man who is in court that you saw on the pier? A. No, I did not.

Q. During the period of time from the 15th of March to the 15th of April, 1944, give me your best recollection of ships that you made deliveries to, the names of them.

Mr. Pratt: He asked him that yesterday, if the court please. That is repetition.

Mr. Faulkner: I beg your pardon, I did not.

The Court: I think the record will disclose you did. However, he many answer.

Mr. Faulkner: Not March 15th, your Honor.

The Court: It may be in relation to another date. Read the question, Mr. Reporter. He may answer.

(Answer read.)

The Witness: A. That I can't remember. [2392]

Mr. Faulkner: Q. From the 18th of April until the day you left, on how many occasions did you go, yourself, and take cases of eggs that were stacked at a point next to Mr. Goddard's office and

(Testimony of Oscar Nystrom.)

put it on a truck, how many instances did you do that?

A. There could be any number of times.

Q. How many?

A. I can't state an exact figure.

Q. Five times? A. Probably more.

Q. Ten times?

A. Could be that many.

Q. Pardon me?

A. Could be that many, could be less, and could be more. I can't recollect the exact figure in that respect.

Q. Would you say that ten times would be the maximum? A. No, I would not.

Q. Twenty?

Mr. Pratt: I object to that character of questioning.

Mr. Faulkner: I want a fair figure, your Honor.

Mr. Pratt: He has already given a statement, as definite a statement as he could. It was around ten to twelve times.

Mr. Faulkner: If he said that I didn't hear him.

Q. Did you say it was around ten to twelve times?

A. I am not saying ten or twelve times. I say it—you asked me if at least five times or six times. I say it may be that and it may be more and might be even less.

Q. Mr. Pratt, the attorney for the Government, says that you said ten or twelve times. Did you say that at any time in [2393] this case?

(Testimony of Oscar Nystrom.)

A. It could even be more than that.

Q. It could be more?

A. Yes. I don't recollect the exact times.

Q. I would like you to give me, the maximum, according to your best recollection, of the number of times you went to this stockpile of eggs next to Mr. Goddard's office and got some eggs.

A. Are you referring from the time between April 15th to the time I left there?

Q. April 18th.

A. April 18th to May 13th; you are not referring to the time I had been there, all told?

Q. No. April 18th until the time you left, a period of 25 days.

A. Well, I should say it was closer to fourteen.

Q. You would say fourteen times?

A. Close to that yes, approximately. I am saying approximately; I am not speaking about an exact figure.

Q. Where did you take the eggs on those fourteen occasions after you put them into your truck?

A. I put them into my truck, yes, on occasions.

Q. But each time your truck left there you were going to call on at least two or three customers, weren't you?

A. That I can say definitely not.

Q. What was the average number of deliveries that you made a day?

A. The average deliveries to the waterfront would be two or three times a day.

(Testimony of Oscar Nystrom)

Q. What was the average number of times other than to the [2394] water front?

A. There were very few.

Q. You made a routine call every day to two stores.

A. That's right. Outside of the routine calls it was very few other deliveries.

Q. Then that was two or three times to the waterfront and two times to customers, that would be about five calls every day, and sometimes more?

A. There would be more sometimes.

Q. There would be more? A. Yes.

Mr. Faulkner: May we have a recess at this time, because I think I will be able to close.

The Court: We will take the recess.

(Recess.) [2394-a]

Q. Mr. Nystrom, do you recall yesterday I asked you about the time that you first talked to any member of the FBI and you said that it was some time before the delivery to the John Muir, isn't that right. A. That is right.

Q. Assuming that that delivery, Mr. Nystrom, was on or about the 24th of April, how long before that had you talked to an agent of the FBI?

A. I can't state the exact time, but I could say approximately a week or so.

Q. What? A. Around a week.

Q. Do you recall a conversation with Mr. Berman on or about April 7, 1944, in the plant of Nye & Nissen, in which you told Mr. Berman that you were in the clutches of the FBI?

A. No, I do not.

(Testimony of Oscar Nystrom.)

Q. Do you recall at that time that you told Mr. Berman that you were in the clutches of the FBI and he asked you what you had done, and you told him that you had played professional football under an assumed name and that they were after you for taxes, and that you would have to quit? Do you remember that conversation?

A. Yes, I do remember that.

Q. Do you remember that you took an afternoon off right about that time and told Mr. Berman you had to go to Redwood City?

A. That is right, I remember that.

Q. Now, you did not go to Redwood City, did you? Did you?

A. Has that any bearing on the case?

Q. Yes. You did not go to Redwood City, did you? A. No, I didn't.

Q. You went down to 111 Sutter Street, didn't you? A. I didn't.

Q. Did Mr. Berman not then say to you, or did you not say you needed more money or you would have to go work on the waterfront to earn money to pay these taxes that the FBI were after you for?

A. I didn't say the FBI were after me.

Q. You did not use that expression?

A. I did not.

Q. Tell me the conversation as you remember it.

A. As I remember at that time I seen the way things were going around that plant.

Q. No, the conversation, Mr. Nystrom, what you said to Mr. Berman and what he said to you.

(Testimony of Oscar Nystrom.)

Mr. Hippeli: I would like to ask that the witness be be allowed to answer the question.

Mr. Faulkner: That hasn't any relation to a conversation.

Mr. Hippeli: When Mr. Faulkner doesn't like it he stops it.

The Court: What hasn't any relation to the conversation?

Mr. Faulkner: The statement, "I saw how things were going around the plant.". I asked him for the conversation.

The Witness: I am referring, your Honor, to the respect what is leading up to his question and how it came about up to that question.

The Court: Tell the Jury.

Mr. Faulkner: Your Honor, I have not asked him what caused him to borrow the money or have the conversation.

The Court: Tell the Jury the conversation as you remember it. Tell the Jury.

The Witness: I just want to know—that is, I can't explain how it came about, that conversation?

The Court: You can state the conversation and then you can make any explanation you wish after you tell them about the conversation that you had.

The Witness: A. I told Mr. Berman being I played back east, I played professional ball—now, when I told him this I wasn't giving him a true statement, but I had played ball back east under an assumed name, and I gave him the impression that I was behind in taxes to be paid; but I had the

(Testimony of Oscar Nystrom.)

money to make the taxes up; but I made that story up in that respect so I would have a good reason, being this country at that time was at war and we were frozen on our jobs, and I would have a good excuse to leave that job in order to better myself to accumulate more money so I could pay off a certain amount of tax bill. Now, this story isn't true, but I was making this story up so I figured he might feel, "Well, we won't hold the fellow back. We will give him a legitimate excuse to quit because after all if a fellow has a chance to better himself and make a little more money to take care of himself, we will let him go." I figured he would feel he wouldn't want to hold me back. But instead of that he asked me how much money I needed. So I told him it was a certain amount of money. I believe it was three or four hundred or $450 at that time.

Well, he says, "Well, maybe we can arrange it for you and then you can pay us back a certain amount at a time." He said, "We all have our troubles and maybe we could help you out in that respect and go along that way. We would make arrangements. You could give us so much out of your check every week. We will withhold so much until it is paid."

Now, I know that has been done with respect to other people that worked there. So I says, "Well, I am going to go home and talk to my father in the first instance and see what he says about the situation." I said I had a chance through a friend of mine to go to work at the waterfront to make

(Testimony of Oscar Nystrom.)

eighty-five or a hundred dollars a week, whereas at that place there I was making approximately sixty dollars a week. So I went home and I came back and says, "Well, I really don't need that much money. I can scrape up enough. It will only be about a hundred dollars short, but I can make arrangements for that, too."

"That is all right," he said. "I will arrange with Mr. Moncharsh so you get the hundred dollars and then you can arrange to pay us back."

He went and talked with Mr. Moncharsh. They talked a few moments and then he came back and he said, "That is all you need is a hundred dollars?"

He stuck his hand in his pocket, counted off a hundred dollars, and gave them to me.

So Geez, like I say, leading up before that incident, I seen the way things were around there and I didn't like to be involved in anything, so right away when he gives me the hundred dollars and I see they liked my work there and they wanted me to stay there and work, Geez, it left me with my hands tied, and so forth. I really wanted to get out of there, in other words, so I made arrangements to give them ten dollars a week out of my check. So I stayed there. After that happened there I stayed about five weeks or so and made the payments. They took so much out of my check each week, and then I gave them a lump sum so I could leave there. Like I say, the way things were going there I wanted to get out of there in the first place and I was just useing it as an excuse to get out of there.

(Testimony of Oscar Nystrom.)

Mr. Faulkner: Your Honor, I did not want to interrupt him——

The Court: Q. Is that all the conversation?

The Witness: A. That is all the conversation, your Honor.

Mr. Faulkner: Q. Mr. Nystrom, the time of your first conversation with Mr. Berman was on the exact day that you made a contact with Mr. Magee, wasn't it? A. It was not.

Q. How many days elapsed between your conversation and this fictitious story about the tax authorities being after you was it that you got in touch with Mr. Magee?

A. That I don't recall.

Q. Was it a week?

A. It could be within the week, yes.

Q. Isn't it a fact, Mr. Nystrom, that the exact words that you used to Mr. Berman in your conversation was that "I am in the clutches of the FBI and that is where I was when I went to Redwood City yesterday?" Weren't those your exact words?

A. As far as the Federal Bureau of Investigation is concerned, that is the one word that I can honestly say I never did use in that respect. The words I did use in that respect, as long as you are asking me, is the Internal Revenue officer had served me with papers for back taxes. That is all I have in that respect is just what I said.

Q. Did you tell him then that the Internal Revenue officers were after you?

A. Yes, I told them that they gave me sixty days to make up back taxes.

(Testimony of Oscar Nystrom.)

Q. In other words, that was not true, was it?

A. No, absolutely not true. I admitted to the Jury that story wasn't true, and I gave my reason for the story.

Q. In addition to explaining that Department of Internal Revenue agents were after you, you also went into detail and explained to Mr. Berman that they gave you sixty days to pay the money?

A. Yes, thirty to sixty days, approximately that length of time.

Q. At that time you asked him for a certain amount of money, did you not?

A. I never asked him for any money. [2400]

Q. Did you mention an amount of money that you required? A. I did.

Q. How much? A. Approximately $450.00.

Q. And you did not require $450 to pay in taxes, did you?

A. No, because I had the money and I had paid it.

Q. You had paid what?

A. I had paid them taxes.

Q. When did the taxes arrive?

A. That was long before this incident that came up.

Q. How many years before?

Mr. Hippeli: I object to that as immaterial, your Honor.

Mr. Faulkner: I want to show your Honor he created out of his imagination an incident that occurred years before as the basis and went into

(Testimony of Oscar Nystrom.)

minute detail in respect to it with these men at that time as the basis of making an explanation of something.

The Court: Read the question.

(Question read.)

The Witness: A. Do I have to answer that?

The Court: You may answer it. Tell the Jury.

The Witness: A. When did that incident happen?

Mr. Faulkner: Q. Yes.

A. I can't name the exact day, your Honor.

Q. What years were you playing professional football?

A. Back in 1934 and 1935.

Q. So that in 1944 you used an incident that occurred in your life ten years previously as the basis of a discussion with Mr. Berman, is that right?

A. May I answer you in this respect: Your Honor, I have made the answer in this respect, that I have made this story up.

The Court: Speak to the Jury.

The Witness: Men and women of the Jury, I made that story up in that respect. I had to explain to you why I did make this story up, and I didn't say it was a true story. That should answer your question, Mr. Faulkner.

Mr. Faulkner: Q. Do you know Mr. Menges who sits here in court, the man there in the brown suit? A. Yes, I do.

Q. You used to ride in his automobile or he in yours to and from work, didn't you?

(Testimony of Oscar Nystrom.)

A. I have on occasions, yes.

Q. What? A. I have on occasions, yes.

Q. During the period around the early part of April to the time you quit didn't you tell Mr. Menges on at least ten occasions that you were in the clutches of the FBI. A. I never have.

Q. Did you ever mention the FBI to Mr. Menges? A. I never did.

Q. Did you ever mention the Department of Internal Revenue to Mr. Menges?

A. I mentioned that I was behind in taxes.

Q. To Mr. Menges? A. Yes, I did.

Q. But you were not behind in your taxes, were you?

A. No, I was not. I gave the reason for the story, didn't I?

Q. So in addition to telling Mr. Berman this fictitious story about taxes, you were also telling a fellow worker, Mr. Menges, isn't that right?

A. That is right, because he was so influential with them and right in with the company.

Q. After your original conversation, whether it is the way that I stated it to you or that you stated it, after that you came back and talked to Mr. Berman and told him that you had arranged to borrow some money from your father?

A. That is right.

Q. And you had not arranged to borrow any money from your father, had you?

(Testimony of Oscar Nystrom.)

A. I did not.

Q. And you said that they then gave you—Mr. Abe Moncharsh gave you a hundred dollars?

A. No, Mr. Abe Moncharsh did not give me a hundred dollars. Mr. Berman gave it to me.

Q. Excuse me. I thought you said Mr. Moncharsh, the man who put his hand in his pocket and gave you the hundred dollars?

A. No, but he talked to Mr. Moncharsh in respect, I guess, in taking the payment each week out of my wages?

Q. And that was agreeable to you?

A. That was agreeable, yes.

Q. And you got the hundred dollars?

A. Yes.

Q. And you paid it back?

A. I paid it back.

Q. And the day that you left you made a final payment of $40, did you not?

A. That is right.

Q. And that was on the 13th of May?

A. That is right.

Q. And the incident occurred when the hundred dollars was borrowed by you on April 8, isn't that correct? A. It must be if you say so.

Q. What?

A. It must be if you say so. You have the exact date. I don't remember the exact date.

Q. Well, is the date that I mentioned in accord with your best recollection?

A. It must be to my best recollection because you have contact with the defense. They know more

(Testimony of Oscar Nystrom.)

about it that I do, because I don't remember incidents like that.

Q. The entry I have may be wrong, Mr. Nystrom. I just want to know from you if it was about the 8th of April?

A. Approximately so, yes.

Q. And it was about the 8th of April you were down talking with Mr. Magee, wasn't it?

A. It was some time in there, yes.

Q. Did you testify before the Grand Jury?

A. Yes, I did.

Q. How many times did you talk to Mr. Magee before you went before the Grand Jury?

A. How many times?

Q. Yes. A. That I don't remember.

Q. Was your memory refreshed before you went to the Grand Jury by Mr. Magee with any papers that he had? A. That I don't remember.

Q. Did you tell the Grand Jury that you did not remember these ships or the dates or the quantities of merchandise?

Mr. Hippeli: I object to what he told the Grand Jury.

The Court: The objection is sustained.

Mr. Faulkner: Q. Did you talk to Mr. Hippeli before you went to the Grand Jury?

A. Mr. Hippeli?

Q. Right here—this gentleman right here (indicating)?

A. I have talked to him, yes.

Q. Before you went before the Grand Jury?

(Testimony of Oscar Nystrom.)

A. Yes, I did.

Q. Did you receive any of the money that you paid back to Nye & Nissen on the hundred dollars from the Department of Justice?

A. No, I did not.

Q. Did you receive any money from them at any time? A. No, I did not.

Q. Have you received any money from them at this time? A. I have not.

Q. On no occasion? A. No occasion.

Mr. Faulkner: That is all.

Mr. Hippeli: That is all, Mr. Nystrom.

MILTON R. EVANS

called on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. Major Milton R. Evans.

Direct Examination

Mr. Pratt: Q. Major Evans, where is your home? A. Long Beach, California.

Q. And you are at the present time in the Army? A. That is right. [2405]

Q. With the rank of major, I believe?

A. That is correct.

Q. During the year 1944, in April and May, what was then your rank?

A. I was a captain at that time.

Q. And your position in the Army is in what branch of the service?

A. Medical Department, Veterinary Corps.

(Testimony of Milton R. Evans.)

Q. Major, what has been your education?

A. I am a graduate of Ohio State University with a degree of Doctor of Veterinary Medicine.

Q. When did you graduate at Ohio State?

A. In 1939.

Q. In connection with your college work did you have courses relating to poultry husbandry?

A. We did.

Q. And does that include some technology of eggs and the products of eggs?

A. The fundamentals.

Mr. Faulkner: May I have that question?

Mr. Pratt: That is a two dollar word.

Mr. Faulkner: It is a two-dollar word but a one-cent sentence.

The Court: Read the question and answer.

(Question and answer read.)

Mr. Faulkner: If he says yes or no I don't know if anyone would know what he meant.

Mr. Pratt: You may cross-examine on that.

Q. Does it also include the study of dairy products? A. Yes sir.

Q. You say you graduated in 1939. Upon graduation what did you [2406] do?

A. I entered into general practice in the City and County of Honolulu, Hawaii.

Q. In Honolulu?

A. In an association there with another veterinarian.

Q. When did you enter the Army?

A. In August of 1842.

(Testimony of Milton R. Evans.)

Q. With what rank? A. First lieutenant.

Q. And where were you assigned?

A. To the Veterinary Station Hospital, Presidio of San Francisco.

Q. And what were your duties?

A. I was assistant to the Station Veterinarian.

Q. What did that involve?

A. That included primarily the inspection of meat, meat food and dairy products.

Q. Did that include eggs? A. Yes.

Q. In connection with your service with the Army did you have some special study that was prescribed by the Army? A. Yes sir.

Q. In what connection was that?

A. I attended the regular course of instruction on meat and dairy hygiene conducted by the Army for veterinary officers.

Q. How long a course was that?

A. That was a six weeks course.

Q. And after the six weeks course then what assignment did you have?

A. That was during my tour of duty at the station.

Q. What position did you have then?

A. At that time I was supervising inspector at that station.

Mr. Faulkner: May I have that answer read?

Mr. Pratt: "Supervising inspector at the station."

Q. That was at the Presidio?

A. That is right.

(Testimony of Milton R. Evans.)

Q. What territory did that cover?

A. At that time it included the City of San Francisco and stations extending from San Jose to Eureka.

Q. What if anything did you have to do with the inspection of food products?

A. For a period of time I was regularly assigned to one district for the inspection of products for which our organization was responsible for inspection, and subsequent to that I supervised the inspection of other inspectors primarily where there was some difficulty regarding inspection problems.

Q. And that included food products for the Army? Yes sir.

Q. And other services?

A. Well, that included products purchased for the Army, Navy, Coast Guard, Marine Corps, and some few other agencies,—war prisoner camps.

Q. And were you later designated as an appeal inspector in connection with the inspection of food products for these services?

A. I was at various times designated by Headquarters, Ninth Service Command, as a disinterested qualified inspector in cases of questionable inspections.

Q. What proportion of your services related to the inspection of eggs, butter and cheese?

A. I would approximate that at about forty percent of our duties.

Q. In connection with your services in the Army

(Testimony of Milton R. Evans.)

did you [2408] experience in the examination of eggs by candling? Yes sir.

Q. How extensive was that experience?

A. The greatest—you mean relative? The greatest proportion of our inspection of eggs was done by candling.

Q. During how long a period were you experienced in the candling prior to April and May of 1944?

A. I have been continuously inspecting eggs from the time I came to duty until that time.

Mr. Faulkner: Your Honor, may I have that time?

The Court: Read the question and answer.

(Question and answer read.)

Mr. Pratt: Q. Was your employment changed during the course of your service with the Army so far as your territorial jurisdiction was concerned?

A. I don't know that I understand the question.

Q. Weren't you later assigned to the San Francisco Quartermaster Market Center, relating to the supplying of food products to the Central Pacific area which did not in fact include the City of San Francisco?

A. I was assigned as attending veterinarian to that organization and was responsible for procurement, storage and the supervision of a large share of perishable subsistence that went through this port.

Q. Did that include the City of San Francisco?

A. Both this area, Northern California, South-

(Testimony of Milton R. Evans.)

ern Oregon, and the products that went to the Central and Southwest Pacific. [2409]

Q. Now, in connection with your services as an Army officer in the Veterinary Corps, Medical Corps, were you engaged in your activities both here in San Francisco then and in other parts of the State of California? A. Yes.

Q. Are you familiar with or did you have activities at Petaluma, California?

A. Yes, we had a small detachment station there that was assigned to our organization.

Q. In connection with your activities have you been in contact with the firm of Nye & Nissen or the corporation of Nye & Nissen? A. I have.

Q. Since what time?

A. From the time I came to duty, which was in 1942, practically up to the present time; indirectly the time that I was in the San Francisco Market Center.

Q. Are you acquainted with the officers and employees of that corporation?

A. I know them, yes sir.

Q. Which ones?

A. I know Mr. Moncharsh, Mr. Goddard and Mr. Berman.

Q. Do you know Mr. Menges? A. Yes sir.

Q. Do you know Mr. Smith? A. Yes sir.

Q. Do you know what office in that corporation Mr. Smith occupied?

A. I believe he is the vice-president of the organization.

(Testimony of Milton R. Evans.)

Q. And what during the period of your contacts were the functions or duties or activities of Mr. Goddard, if you know?

A. He apparently was the floor manager of their plant. [2410]

Q. And Mr. Berman, were you acquainted with him?

A. I didn't have very many direct associations with him. Mostly just casual conversations.

Q. Do you know what his activities were in connection with the company's business?

A. Not exactly; no sir. He had something to do with the distribution of supplies going out of the plant.

Q. Now about Mr. Menges? What did he do, do you know?

A. Well, he seemed to be more or less in charge of the egg section of the plant, opening egg cases.

Q. You say your contacts with Nye & Nissen were continuous?

A. In the city, do you mean?

Q. Yes.

A. No, up until December of 1943—subsequent to that time our organization was not responsible for inspection in the City of San Francisco proper.

Q. Then there was some change in December of 1943, so far as your functions were concerned?

A. In so far as the City of San Francisco was concerned, our agency was no longer responsible, that is, the veterinary organization; the California

(Testimony of Milton R. Evans.)

Quartermaster Depot became responsible for the inspection of the city here.

Q. Your connection was with the Presidio and not with the Quartermaster Corps, is that right?

A. Yes.

Q. In your contacts with this corporation what did you observe in regard to the activities of Mr [2411] Moncharsh?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial, and not within the issues of the case, your Honor. It is too general.

Mr. Pratt: I want to know what activities he observed on the part of the defendant Moncharsh.

The Court: The question is general. He is entitled to any contacts he may have had, the time, the place and persons present.

Mr. Faulkner: Your Honor—— [2411-a]

The Court: Go directly to what you are trying to develop, so there is no question.

Mr. Pratt: It is a general question during this period of contacts that Major Evans had.

The Court: Read the question.

Mr. Pratt: I should like to have him simply tell what he observed as to the activities of Mr. Moncharsh, what he observed during this period.

The Court: Read the question.

(The question was read by the reporter.)

The Court: What he observed in relation to Mr. Moncharsh.

Mr. Faulkner: Your Honor, I made an objection.

(Testimony of Milton R. Evans.)

The Court: I will overrule the objection. I will allow it as a preliminary question.

Mr. Faulkner: If the Court please, I want to call your attention to the fact that we have stipulated to Mr. Moncharsh being president of this corporation. To have a witness testify to what he saw or observed a man do, unless there is some claim that what he was doing——

The Court: I suggested he might go directly to any occurrence that he wished to develop. Proceed.

Mr. Pratt: Has the question been answered?

The Court: He may answer.

Mr. Faulkner: Exception

The Witness: Well, my contacts with Mr. Moncharsh and [2412] my observations would be just on occasions where there was a casual conversation; more commonly if we had certain difficulties in regard to inspections I would refer it to Mr. Moncharsh.

Mr. Pratt: Q. During the month of April, 1914, did you have occasion to inspect any eggs at ships on the waterfront: eggs or other products which had come from Nye & Nissen?

A. I did.

Q. When was the first of those activities?

A. As I recall, it was the latter part of April of 1914.

Q. What was the ship?

A. I believe that was the Cape Charles.

Q. Do you know the date in connection with any

(Testimony of Milton R. Evans.)

inspection of eggs or other products in connection with the Cape Charles?

Mr. Faulkner: This is offered under what count of the indictment?

Mr. Pratt: This is offered in connection with the first count of the—this is offered in connection with the second count of the indictment, and also the first count.

Mr. Faulkner: Your Honor will recall we discussed that matter in regard to the general objection genetally as to its incompetency, immateriality and irrelevancy and also an objection that embodied the thoughts expressed to your Honor that testimony of this type was an effort to prove an offense by sampling, and the sampling was subsequent to the delivery, and on the basis of these transactions that inspections at the [2413] time of delivery; when in the course of this testimony I refer to that objection will that be sufficient for your Honor so I won't have to repeat?

The Court: You may have a record now. You may object so there is no question.

Mr. Faulkner: If the Court please, I make that objection and presented that point to your Honor, and your Honor has passed on it heretofore.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

The Court: I will allow the testimony as to the first count, the conspiracy count, and the second count.

Mr. Faulkner: Exception.

(Testimony of Milton R. Evans.)

Mr Pratt: Q. When was this occurrence, your inspection of products in connection with the Cape Charles?

A. I don't recall the date exactly; I believe it was around the 28th or 29th.

Q. Of what month? A Of April.

Q. Of April, 1944? A. Yes.

Q. Do you recall with whom you were associated in connection with that investigation or inspection?

A. With two agents of the Federal Bureau of Investigation.

Q. Their names?

A. Agents Magee and Johnson.

Q. What did you do in connection with that investigation?

Mr. Faulkner: Well, that would be hearsay as to the defendants, your Honor, and not binding upon them. [2414]

The Court: I will allow it. Overruled.

Mr. Faulkner: Exception.

The Witness: A. I accompanied them aboard this vessel and examined some eggs.

Mr. Pratt: Q. Where was the vessel at the time?

A. It was in the stream, that is, anchored out in the bay, San Francisco Bay.

Q. Did you go out onto the ship from the shore?

A. Yes, sir, we went aboard in a Coast Guard Cutter.

Q. A Coast Guard Cutter took you and these agents out to the ship, is that right?

(Testimony of Milton R. Evans.)

A. Yes.

Q. When you got out there on the boat did you observe some eggs there on the boat?

A. Yes.

Q. Where were they?

A. They were on the deck, toward the stern of the boat.

Q. What did you do in connection with these eggs, in examining or inspecting them?

Mr. Faulkner: We object to that. There is no foundation laid thus far in this witness' testimony of whose eggs they were, where they came from, how they got there.

Mr. Pratt: The evidence shows thus far, if the Court please, that eggs were delivered there to the steamship Cape Charles; the evidence of the invoices here, Exhibit No. 94 is the invoice whereby Nye and Nissen charged the Government for certain products, and the evidences shows that these products [2415] were delivered at the pier where this boat at the time was lying.

Mr. Faulkner: That's right, and now the eggs are on the stern of a vessel, but whose eggs are they?

Mr. Pratt: Well, we——

Mr. Faulkner: There is no question that Nye & Nissen sold eggs to that boat, but what eggs is this man talking about?

Mr. Pratt: The evidence so far is that the Steward pointed out these eggs to the FBI and to Major Evans, perfectly clear. Now, the further testimony

(Testimony of Milton R. Evans.)

of the witness will further identify these particular eggs.

Mr. Faulkner: You have not identified them yet.

Mr. Pratt: I can't do everything at once.

The Court: He is entitled to a foundation to be laid if you can lay it.

Mr. Pratt: Q. When you arrived at this point on this ship you examined some eggs, did you?

A. Yes.

Q. Did you make any record at that time of your examination of the eggs? A. I did.

Q. Have you that with you?

A. Yes, I have it here.

Q. Will you produce it and use it so far as is necessary to refresh your recollection of what occurred in connection with these eggs?

Mr. Faulkner: Before he does that, may I examine him as [2416] to the document that he has there, your Honor?

The Court: Yes.

Mr. Faulkner: Q. Major; there is a paper that you just took out of an envelope. Is that in your handwriting? A. Yes.

Q. Entirely?

A. Yes. Let me see. The one notation here, "See Evans" is not in my handwriting.

Q. That is Colonel Hand's handwriting, is it not?

A. Yes. You must be an expert.

Q. Major, this purports to be a document relating to the candling of certain eggs; am I correct?

(Testimony of Milton R. Evans.)

A. That's right.

Q. Certain information appearing on the top of that document, the date, for instance, the number of cases, and the ship, and so on, you filled all that out at the time? A. Yes.

Q. This document relates to eggs that were on the stern of the ship, the Cape Charles, is that right? A. That's right.

Mr. Faulkner: Your Honor, I assume that this record shows that the eggs that the Major inspected are Nye & Nissen eggs, but I don't remember that record, and this testimony, I am not taking a technical position, there is no question we delivered eggs, there is no question the major examined eggs, but I don't remember that there is in this record any evidence, and I may be completely wrong, that the Colonel examined the eggs that Nye & Nissen supplied to the boat. If you are certain of it, Mr. Pratt, I don't wish to interrupt your examination.

The Court: Do you know whether or not these eggs were from [2417] Nye & Nissen, yourself, of your own knowledge?

A. They bore a Nye & Nissen label.

The Court: Proceed.

Mr. Faulkner: In other words, I submit respectfully that there has not been a foundation laid.

The Court: Objection overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Q. May I have Exhibit 94? How many cases of eggs did you find on the deck of the Cape Charles on that occasion?

(Testimony of Milton R. Evans.)

A. We found and counted 36 cases.

Q. And of these 36 cases did you observe a label on them, a stamp on them?

A. Yes. They bore the Nye & Nissen Biddy brand of egg, a green label, "Mediums," and on a portion of them there was a Department of Agriculture inspection stamp.

Q. On how many of them was there a Department of Agriculture inspection stamp?

A. 32 of them.

Q. On the other four cases what was the label?

A. It was the same label, but with no inspection label.

Q. Where did you examine these eggs or candle them, if you did that?

A. On this vessel the eggs were on deck, as I said, and right adjacent to them was a little deck house, apparently an electrical control room with a bunch of electrical switches and fuses and the like, and which had no windows in it, and I candled them in that little room with the doors closed.

Q. Did you have a candling light, an electric candling light, [2418] with you?

A. I did. I had the standard Army candling light.

Q. You set it up in this little deck house?

A. Yes. The electrician fixed up a connection for my light.

Q. How many cases of these eggs did you examine or candle? A. Four.

Q. The first of these cases that you examined,

(Testimony of Milton R. Evans.)

did it contain an inspection stamp. Department of Agriculture inspection stamp, or not?

A. It did not.

Q. How many eggs in that case did you examine or candle? A. There was 100.

Q. With what result?

A. By grade, you mean?

Q. Yes.

Mr. Faulkner: We make the objection, your Honor, to all this testimony, that I have given your Honor at the beginning of his testimony.

The Court: The objection overruled.

Mr. Faulkner: Particularly that any testimony introduced, that there is no foundation showing the participation of the defendants, no foundation shown in respect to the inspection of the original eggs or the quality of eggs at the time of the original inspection.

The Court: Overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Q. What was the result of your examination by candling of these 100 eggs in the first case that you examined? [2419]

A. I found 41 percent U. S. Grade AA, 35 percent U. S. Grade A, 16 percent U. S. Grade B, 2 percent Grade C, 2 percent Small Blood Spots, 3 Checks, 3 percent checks, and one inedible egg.

Q. Out of the hundred? A. Yes.

Q. How did that case of eggs grade, from your examination by candling?

A. You mean the consumer grade?

(Testimony of Milton R. Evans.)

Q. Yes.

A. Well, it could not be given a consumer grade on the basis of the one inedible egg being present in the hundred that I candled.

Q. Eliminating consideration of the fact that there was one inedible egg out of these hundred, what consumer grade did you give those eggs on your examination?

Mr. Faulkner: That is hypothetical. The witness has testified that an inedible egg prevented him giving it a grading and the assumption is what grade would he have theoretically given it if a certain standard that is claimed to exist did not exist. We are not bound by that.

The Court: Did you say you couldn't give it a grade because there was one inedible egg there?

The Witness: Yes. The Department of Agriculture standards do not include provision for any inedible eggs in consumer grades of eggs.

Mr. Pratt: I am asking, just diregard the fact that there was one inedible egg out of these hundred; I am asking what grade— [2420] I think I am entitled to that.

Mr. Faulkner: That is argumentative.

The Court: Well, I will allow it.

Mr. Faulkner: Exception.

A. It would have been a Grade B, slightly under Grade A.

Mr. Pratt: Q. Grade B? A. Yes.

Q. Did you weigh the eggs in that case?

A. I did.

(Testimony of Milton R. Evans.)

Q. How did you do that?

A. By removing the eggs contained in the flats and fillers of a half of the case and weighing the quantity in the half case, and we find out what that case weighed by multiplying that weight by two, to get both sides of the case. I then deducted 3½ pounds from that figure, which is the weight of the flats and fillers in a full case of eggs.

Q. So what did you find the net weight of that case of eggs to be?

A. By that method I determined the weight of 34 pounds 14 ounces.

Q. What did that case of eggs classify as to size?

A. That would barely put it within the classification of U. S. Small.

Q. You said that this case was labeled with a green label and the word "Medium"?

A. Yes.

Q. Was there any other indication on the label of the grade of the eggs?

A. Not on this case, no.

Q. Did that case classify as Medium?

A. No, sir.

Q. Then the weight, the shortage of weight; would that forbid [2421] it being classified as Medium?

A. That would be five pounds two ounces short of the weight required for U. S. Medium.

Q. That is, the net weight? A. Yes.

Q. How many other cases did you examine?

(Testimony of Milton R. Evans.)

A. Three.

Q. Referring to the second case that you examined, on that case was that a stamped case with the Department of Agriculture stamp?

A. No, it did not bear any inspection stamp.

Q. What did you determine in candling eggs in that case?

A. You want percentages?

Q. Yes. How many eggs did you examine?

A. 100 eggs.

Q. With what result?

A. I found 14 percent Grade AA, 36 percent Grade A, 35 percent Grade B, 12 percent Grade C, and 3 inedible eggs.

Q. Why were they inedible?

A. They were mixed rots.

Q. How did these eggs grade?

A. They could not be given a Consumer grade due to the presence of the inedible eggs.

Q. There were 3 percent inedible?

A. Yes.

Q. Eliminating the consideration of the fact that there were inedibles in the case, how would it Grade?

A. Well, it would——

Mr. Faulkner: The same objection.

The Court: Overruled.

Mr. Faulkner: Exception.

The Witness: They would grade U. S. Consumer Grade B.

Mr. Pratt: Q. Did you weigh this case of eggs?

(Testimony of Milton R. Evans.)

A. We did.

Q. Did you weigh the case in the same manner as you did the [2422] first ones?

A. Exactly.

Q. By taking the eggs out of half the case?

A. Yes.

Q. Then multiplying the net result by 2?

A. Yes.

Q. And what did you find the weight of the eggs, the net weight of the eggs in that case?

A. 33 pounds 4 ounces.

Q. How would the eggs in that case classify?

A. There is no provision under the Department of Agriculture Consumer grades of eggs for eggs of that weight. In other words, there is not a designation or class of eggs.

Q. That is below the minimum weight allowed under Governmental regulations?

A. For the classification of Small.

Q. What is the classification for an egg of that weight?

A. They are generally referred to as "Peewees."

Q. The label on that particular case you spoke of was a green medium egg label, is that right?

A. Yes.

Q. The next case that you examined on the Cape Charles, was that a stamped or an unstamped case?

A. It did not bear an inspection stamp.

Q. And a label?

A. It had the same label, "Biddy Egg."

(Testimony of Milton R. Evans.)

Q. The green label? A. Yes.

Q. What was the result of your candling of that case?

A. I found 44 percent Grade AA, 33 percent Grade A, 18 percent Grade B, 3 percent Grade C, and 2 Checks.

Q. What did the eggs in that case grade as a whole?

A. They would still grade a Grade B; it is slightly under [2423] Grade A.

Q. B? A. Yes.

Q. What was the weight?

The Court: We will now take a recess until two o'clock this afternoon. The jurors may be excused.

Mr. Faulkner: May that document be marked for identification?

Mr. Pratt: He will have it here this afternoon.

Mr. Faulkner: I would like to see it in the intermission.

Mr. Pratt: Oh, all right, sure.

The Court: Mark it for the purpose of identification.

(The document was marked Defendants' Exhibit AY for Identification.)

(A recess was thereupon taken until 2:00 o'clock p.m.) [2424]

Afternoon Session, March 7, 1946, 2:00 p.m.

The Court: You may proceed.

MILTON R. EVANS,

recalled;

Direct Examination (resumed)

Mr. Pratt: Q. Major Evans, just before the court adjourned for the noon recess I had asked you the result of your candling the third of the cases of eggs which you examined on the steamship Cape Charles. I think that you stated, did you not, the result of that candling? A. Yes.

Q. Did you weight that case of eggs?

A. Yes, sir.

Q. What was the net weight which you found in that connection?

A. 33 pounds 10 ounces.

Q. How would eggs of that weight classify as to size?

A. As I say, there is no classification for that weight of eggs under promulgations of standards by the Department of Agriculture, but they are referred to as "Peewees" in the trade.

Q. They are below the minimum weight for eggs provided by the Department of Agriculture?

A. Yes, the Consumer grades of eggs.

Q. Now, the fourth of these cases that you examined, did that contain a Department of Agriculture Inspection stamp?

A. Yes, sir, it did.

Q. What was the date on that inspection stamp?

(Testimony of Milton R. Evans.)

A. April 27, [2425] 1944.

Q. You examined the eggs on April 29th?

A. Yes.

Q. What did you find with regard to the eggs in that case from your candling?

A. There were 73 percent Grade AA eggs, 21 percent Grade A, 4 percent Grade B, 1 small blood spot, 1 percent Check.

Q. How did those eggs grade?

A. They would grade Grade A, slightly under Grade AA.

Q. Slightly under Grade AA? A. Yes.

Q. The other cases, you said that altogether there were 36 cases of eggs, is that right?

A. Yes.

Q. The total of the 36 cases graded how?

A. On the basis of these samples they would have gra[illegible], considering the fact they contained inedibles which made no grade for them, they would have been a small Grade B.

Q. There was another case of eggs which you did not candle, but which you weighed, was there?

A. Yes.

Q. Was that case stamped with the Department of Agriculture stamp? A. Yes, sir.

Q. Dated what?

A. The same date, April 27th.

Q. Were all the cases that had a stamp on, were those stamps dated April 27th?

A. They all had that same date.

(Testimony of Milton R. Evans.)

Q. What was the result of your weighing of this stamped case, the fifth case which you examined?

A. It weighed 40 pounds 4 ounces. [2426]

Q. That would classify as far as weight was concerned, as what? A. As a Medium.

Q. As Mediums. A. Yes.

Q. On this same ship, the Cape Charles, was there any cheese?

A. There was some cheese. I don't know just how much.

Q. Was that on the deck with the eggs?

A. Not as I recall. As I recall, the cheese, one of the agents brought me a piece of cheese to grade as such.

Q. As to quality? A. Yes.

Q. Did you have anything to do with the weighing of the cheese? A. I did not.

Q. Does this conclude your examination of the eggs that were on the Cape Charles on the occasion you have described? A. Yes, sir.

Q. When you went onto the ship, as you testified this morning, you went out in a small boat, what boat was that?

A. A Coast Guard cutter.

Q. A Coast Guard cutter. Were you on the pier when these eggs were loaded onto the boat, the Cape Charles?

A. Yes. This boat was at a dock at the time we first visited the ship, and they were under instructions to go out to anchorage, and the crew

(Testimony of Milton R. Evans.)

was busy, and we didn't have an opportunity to go aboard at that time to grade the eggs.

Q. If you had gone on board at that time and the boat had gone out into the stream, you could not have gotten back? [2427]

A. Well, primarily, we would not have had our lunch.

Q. So that the boat left and then you went out in the Coast Guard Cutter?

A. Yes, later in the day.

Q. Were there any marks on these unstamped cases of very small eggs that you have described?

A. None other than the regular label, that I recall.

Q. Those labels in each instance were the green label, such as the one I show you here, Exhibit 68?

A. Yes, sir.

Q. Did those labels contain the language that appears at the top of this exhibit, "30 dozen Medium"?

A. Yes, sir.

Mr. Pratt: If the Court please, what the witness has testified to in connection with the eggs on the steamship Cape Charles relates to the second count of the indictment, the specific allegations contained in that count, and at this time I would like to read to the jury the invoice of Nye & Nissen relating to the eggs on that ship, delivered to that boat.

The Court: Exhibit what?

Mr. Pratt: Exhibit 94. It has the invoice heading or form of Nye & Nissen, dated "April 29,

(Testimony of Milton R. Evans.)

1944, USA-WSA, Agwilines, Inter-ocean Steamship Company, General Agent, City, 311 California Street. 36 cases eggs Processed AA 1080 dozen at 41 cents, $442. 3 cases Cheddar Cheese 240 pounds at 28.7 cents a pound, $68.88. 10 boxes of butter, AA, 600 pounds at 46¼ cents, $277.50; Total, $789.18."

Below and to the left is, "Char 60 Steamship Cape Charles 18." [2428] Below that is a certificate in green ink, apparently a rubber stamp:

"I certify that the services herein specified have been performed or that the articles in quantity and——"

Mr. Faulkner: Quality.

Mr. Pratt: "——quality therein specified have been delivered to the vessel in good condition. L. M. —" the name is illegible—"Master, Chief Engineer-Steward."

Further: "I certify no commision has been or is to be paid and that the bill rendered does not include any item for commission."

Further, another rubber stamp which contains this statement: "I certify that the above bill is correct and just, that payment therefor has not been received, that all statutory requirements as to American production and labor standards and all conditions of purchase applicable to the transaction have been complied with, and that State or local sales taxes are not included in the amounts billed."

(Testimony of Milton R. Evans.)

That, as shown in another exhibit, was signed Nye & Nissen.

Mr. Faulkner: But it is not signed there.

Mr. Pratt: No. On the other exhibit which is identical except for the signature, "Nye & Nissen," I believe it is I. Robles, Bookkeeper. I think Mr. Faulkner——

Mr. Faulkner: What is the name? "T", isn't it?

Mr. Pratt: Well, whatever it is. [2429]

Mr. Faulkner: T.

Mr. Pratt: "T. Robles, Bookkeeper."

Mr. Faulkner: The one who signed it, Trini, isn't it?

Mr. Pratt: The one who signed the original invoice, in behalf of Nye & Nissen.

Q. Major Evans, I want to ask you next about your examination of eggs on the steamship Gilbert Hitchcock. Do you remember that occasion?

A. I remember inspecting eggs on that vessel.

Q. With whom did you go to that vessel?

A. I recall it was Agent Johnson.

Q. Where did you go to get on that vessel? Have you any notes from which you could refresh your recollection in that connection?

A. Yes, I have.

Q. On what date did you go?

Mr. Faulkner: May I see the notes, please?

Mr. Pratt: Yes.

Mr. Faulkner: Have you got the other one, Major?

(Testimony of Milton R. Evans.)

The Witness: Yes, that is the first one, and that is the second one.

Mr. Faulkner: May I ask the major a question about it, your Honor?

The Court: Yes.

Mr. Faulkner: Q. Did you make this memorandum on the Gilbert Hitchcock?

A. On the vessel?

Q. Yes. A. Yes, I did. [2430].

Q. Did you make the corrections on the vessel?

A. There are no corrections, I don't believe. Oh, the part, you mean, in pencil, and the part in ink. The part of it that I completed after I candled the eggs and I turned the light on and totaled up the columns.

Q. You first wrote down there were 60 cases of eggs, then you crossed it out to make it 55. When did you do that?

A. I counted 55 cases on that vessel and the agent indicated to me later that there were supposed to have been 60.

Q. But the fact was that at the time you made that memorandum you counted cases of eggs and found there were 60?

A. Yes. I believe you could see the figure 55 and the 60 in pencil. It has been written over in pen.

Q. That is a correction made at the suggestion of Agent Johnson, was it?

A. That is correct.

Q. Everything on this sheet was made on the

(Testimony of Milton R. Evans.)

Gilbert Hitchcock and when you left the Gilbert Hitchcock this sheet was in the same condition it now is in, is that right?

A. There is—this statement down at the bottom, here, I believe, was put on and then the two——

Q. By whom?

A. By myself. It is all my own writing here.

Q. Which statement do you refer to?

A. This printing, here, as to the grade, this part down here.

Q. Did you go back and check these cases again after an agent of the Government told you there were only 55?

A. No, sir. [2431]

Q. So the quantity is information given to you by Mr. Magee or Mr. Johnson?

A. No. The quantity is first indicated there in pencil as 55, that is my own count. That was changed by me to 60 upon the information of Mr. Johnson, who later found himself to be in error.

Q. Which figure did you put down first?

A. If you look under the 60 there and under the scratch marks you will observe 55. That was crossed out to make 60, and later corrected to 55.

Q. When you put the 60 down that was a result of counting, wasn't it?

A. No, it was not. It was information given to me by Agent Johnson, apparently as a result of the invoice.

Mr. Faulkner: I see.

(Testimony of Milton R. Evans.)

Mr. Pratt: Q. How many eggs did you actually see at that time on that boat?

A. All that I saw was 55 cases.

Q. When was it that you made the examination of those eggs?

A. It was on the 1st of May, 1944.

Q. First day of May. A. Yes.

Q. Where was the ship? A. At Pier 23.

Q. You say you found 55 cases of eggs, and where were they when you saw them?

A. As I recall, when I first saw them they were on the dock.

Q. Whereabouts on the dock?

A. If my memory serves me correctly, it was near one of the doorways in a warehouse on the dock, on the side that the vessel was leading.

Q. In counting those eggs you found there were 55 cases. [2432]

A. That's right.

Q. Did you examine them to see what, if any, stamps were on them indicating inspection by the Department of Agriculture? A. Yes.

Q. How many had the Department of Agriculture stamps on them?

A. There were fourteen segregated, those that didn't have the stamp, leaving 41 cases with the Department of Agriculture stamp.

Q. What was the date of that stamp?

A. The 29th of April, 1944.

Q. The date you examined them was the 1st day of May? A. Yes.